IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6489 OF 2002

1. Shri Kundalik Shankar Pawale,)

2. Shri Khandu Shankar Pawale,)

3. Shri Pandurang Budhaji Pawale,)

4. Shri Sambhaji Budhaji Pawale,)

5. Shri Shivaji Budhaji Pawale,)
All Residents of Village)
Kalus, Taluka - Khed,)
Dist. Pune.).. Petitioners

Vs.

1. Special Land Acquisition)
Officer No.22, Collector)
Office Compound,)
Pune - 411 001.)

2. District Resettlement Officer,)
District Pune.)

3. Divisional Commissioner,)
Revenue Division Pune, Pune,)

4. State of Maharashtra,)
Respondent Nos.1 to 4,)
Be served through Government)
Pleader, High Court, Mumbai.).. Respondents

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S/Shri S.R.Agarkar and Abhijit Kadam for the petitioners.

Ms S.S.Bhende, AGP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 28TH SEPTEMBER, 2005.

ORAL JUDGMENT : (PER V.M.KANADE, J)

1. The Petitioners are challenging the acquisition proceedings initiated by the respondent No.1 under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, hereinafter called as "the Rehabilitation Act", read with the provisions of Sections 4 and 6 of the Land Acquisition Act, 1894, hereinafter called as "the said Act".

2. The grievance of the petitioners is two fold. Firstly, it is contended that so far as the holding of the agricultural land of the petitioners is concerned, their separate holding have not been taken into consideration. It is the case of the petitioners that after the death of the grand father of petitioner Nos.3 to 5 on 31st September, 1959, the name of petitioner No.1 was mutated vide Mutation Entry No.159 dated 14th February, 1960 as the manager of Joint Hindu Family. Thereafter, in 1977, the ancestral properties including the agricultural land and houses were partitioned by an unregistered Partition Deed dated 21st April, 1977 and the petitioner Nos.1 and 2

got 1/3rd share each and the petitioner Nos.3 to 5 got 1/3rd share in the share of their deceased father Budhaji. It is contended that however, in view of the declaration under Section 11 of the Resettlement Act, their status was shown joint as co-share through the manager-petitioner No.1. It is contended that therefore, if the individual share of the petitioners is taken into consideration, their individual holding is less than the slab applied for acquisition under Schedule II of the Act, and therefore, the land is not liable to be acquired. The second contention is that the two circulars issued by the Government, one is dated 10th July, 1986, and other is dated 28th June, 1996, both these circulars have not been taken into consideration. Reliance is placed in the decision of the Supreme Court wherein it had directed the Commissioner to consider the case afresh, after taking into consideration the aforesaid two circulars.

3. As regards the first submission made by learned counsel appearing on behalf of the petitioners is concerned, the Division Bench of this Court in **Shivgonda Balgonda Patil & Ors. v. The Director of Resettlement & Ors.,** reported in AIR 1992 Bombay 72, had held that the unregistered partnership deed cannot be taken into consideration for the purpose of

deciding the holding of a person as defined under the Act where it was treated as family arrangement. In view of the ratio laid down in the said decision, the first contention of the petitioners cannot be accepted.

4. As regards the second contention regarding applicability of the aforesaid two circulars is concerned, so far as the circular dated 28th June, 1996 is concerned, admittedly, that circular had been withdrawn by the Government in the year 2000. Therefore, the circular dated 28th June, 1996 will not be of any assistance to the petitioners. So far as the Government Resolution dated 10th July, 1986 is concerned, it is observed in the said resolution that while calculating the holding of a person as defined under the said Act, the lands which are owned by him and fall outside the vicinity zone, should not be taken into consideration. After the aforesaid resolution was issued, the Division Bench in the case of **Sivgonda Balgond Patil (supra)** has, after interpretation of Section 10 of the said Act which is analogous to the provisions of the Rehabilitation Act, observed that the land outside the benefited area can also be acquired. In view of the observations made in the said decision, the notification issued by the

Government, which is prior in point of time to decision of the Division Bench of this Court, will not be of any assistance to the petitioners.

5. In the result, we do not find any substance in the submissions made by the learned counsel appearing on behalf of the petitioners and the petition therefore fails. The petition accordingly is dismissed. Rule stands discharged. Interim relief stands vacated. No order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)